

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR

SENATE BILL NO. 882

99TH GENERAL ASSEMBLY
2018

5755S.02T

AN ACT

To repeal sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.430, 166.456, 166.501, 166.502, 166.505, and 209.610, RSMo, section 166.435 as enacted by senate bill no. 366, ninety-eighth general assembly, first regular session and section 166.435 as enacted by senate bill no. 863, ninety-fourth general assembly, second regular session, and to enact in lieu thereof twelve new sections relating to the Missouri higher education savings program.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.430, 166.456, 166.501, 166.502, 166.505, and 209.610, RSMo, section 166.435 as enacted by senate bill no. 366, ninety-eighth general assembly, first regular session and section 166.435 as enacted by senate bill no. 863, ninety-fourth general assembly, second regular session, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.430, 166.435, 166.456, 166.501, 166.502, 166.505, and 209.610, to read as follows:

166.400. Sections 166.400 to 166.455 shall be known and may be cited as the "Missouri [Higher] Education Savings Program".

166.410. Definitions. As used in sections 166.400 to 166.455, except where the context clearly requires another interpretation, the following terms mean:

(1) "Beneficiary", any individual designated by a participation agreement to benefit from payments for qualified [higher] education expenses at an eligible educational institution;

(2) "Benefits", the payment of qualified [higher] education expenses on

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

8 behalf of a beneficiary from a savings account during the beneficiary's attendance
9 at an eligible educational institution;

10 (3) "Board", the Missouri [higher] education savings program board
11 established in section 166.415;

12 (4) "Eligible educational institution", an institution of postsecondary
13 education as defined in Section 529(e)(5) of the Internal Revenue Code, **and**
14 **institutions of elementary and secondary education as provided in**
15 **Sections 529(c)(7) and 529(e)(3) of the Internal Revenue Code, as**
16 **amended;**

17 (5) "Financial institution", a bank, insurance company or registered
18 investment company;

19 (6) "Internal Revenue Code", the Internal Revenue Code of 1986, as
20 amended;

21 (7) "Missouri [higher] education savings program" or "savings program",
22 the program created pursuant to sections 166.400 to 166.455;

23 (8) "Participant", a person who has entered into a participation agreement
24 pursuant to sections 166.400 to 166.455 for the advance payment of qualified
25 [higher] education expenses on behalf of a beneficiary;

26 (9) "Participation agreement", an agreement between a participant and
27 the board pursuant to and conforming with the requirements of sections 166.400
28 to 166.455; and

29 (10) "Qualified higher education expenses" **or "qualified education**
30 **expenses"**, the qualified costs of tuition and fees and other expenses for
31 attendance at an eligible educational institution, as defined in Section 529(e)(3)
32 of the Internal Revenue Code, as amended.

166.415. 1. There is hereby created the "Missouri [Higher] Education
2 Savings Program". The program shall be administered by the Missouri [higher]
3 education savings program board which shall consist of the Missouri state
4 treasurer who shall serve as chairman, the commissioner of the department of
5 higher education, **the commissioner of education**, the commissioner of the
6 office of administration, the director of the department of economic development,
7 two persons having demonstrable experience and knowledge in the areas of
8 finance or the investment and management of public funds, one of whom is
9 selected by the president pro tem of the senate and one of whom is selected by the
10 speaker of the house of representatives, and one person having demonstrable
11 experience and knowledge in the area of banking or deposit rate determination

12 and placement of depository certificates of deposit or other deposit
13 investments. Such member shall be appointed by the governor with the advice
14 and consent of the senate. The three appointed members shall be appointed to
15 serve for terms of four years from the date of appointment, or until their
16 successors shall have been appointed and shall have qualified. The members of
17 the board shall be subject to the conflict of interest provisions of section
18 105.452. Any member who violates the conflict of interest provisions shall be
19 removed from the board. In order to establish and administer the savings
20 program, the board, in addition to its other powers and authority, shall have the
21 power and authority to:

22 (1) Develop and implement the Missouri [higher] education savings
23 program and, notwithstanding any provision of sections 166.400 to 166.455 to the
24 contrary, the savings programs and services consistent with the purposes and
25 objectives of sections 166.400 to 166.455;

26 (2) Promulgate reasonable rules and regulations and establish policies
27 and procedures to implement sections 166.400 to 166.455, to permit the savings
28 program to qualify as a "qualified state tuition program" pursuant to Section 529
29 of the Internal Revenue Code and to ensure the savings program's compliance
30 with all applicable laws;

31 (3) Develop and implement educational programs and related
32 informational materials for participants, either directly or through a contractual
33 arrangement with a financial institution for investment services, and their
34 families, including special programs and materials to inform families with young
35 children regarding methods for financing education and training [beyond high
36 school];

37 (4) Enter into agreements with any financial institution, the state or any
38 federal or other agency or entity as required for the operation of the savings
39 program pursuant to sections 166.400 to 166.455;

40 (5) Enter into participation agreements with participants;

41 (6) Accept any grants, gifts, legislative appropriations, and other moneys
42 from the state, any unit of federal, state, or local government or any other person,
43 firm, partnership, or corporation for deposit to the account of the savings
44 program;

45 (7) Invest the funds received from participants in appropriate investment
46 instruments to achieve long-term total return through a combination of capital
47 appreciation and current income;

48 (8) Make appropriate payments and distributions on behalf of
49 beneficiaries pursuant to participation agreements;

50 (9) Make refunds to participants upon the termination of participation
51 agreements pursuant to the provisions, limitations, and restrictions set forth in
52 sections 166.400 to 166.455 and the rules adopted by the board;

53 (10) Make provision for the payment of costs of administration and
54 operation of the savings program;

55 (11) Effectuate and carry out all the powers granted by sections 166.400
56 to 166.455, and have all other powers necessary to carry out and effectuate the
57 purposes, objectives and provisions of sections 166.400 to 166.455 pertaining to
58 the savings program; and

59 (12) Procure insurance, guarantees or other protections against any loss
60 in connection with the assets or activities of the savings program.

61 2. Any member of the board may designate a proxy for that member who
62 will enjoy the full voting privileges of that member for the one meeting so
63 specified by that member. No more than three proxies shall be considered
64 members of the board for the purpose of establishing a quorum.

65 3. Four members of the board shall constitute a quorum. No vacancy in
66 the membership of the board shall impair the right of a quorum to exercise all the
67 rights and perform all the duties of the board. No action shall be taken by the
68 board except upon the affirmative vote of a majority of the members present.

69 4. The board shall meet within the state of Missouri at the time set at a
70 previously scheduled meeting or by the request of any four members of the
71 board. Notice of the meeting shall be delivered to all other trustees in person or
72 by depositing notice in a United States post office in a properly stamped and
73 addressed envelope not less than six days prior to the date fixed for the
74 meeting. The board may meet at any time by unanimous mutual consent. There
75 shall be at least one meeting in each quarter.

76 5. The funds shall be invested only in those investments which a prudent
77 person acting in a like capacity and familiar with these matters would use in the
78 conduct of an enterprise of a like character and with like aims, as provided in
79 section 105.688. For new contracts entered into after August 28, 2012, board
80 members shall study investment plans of other states and contract with or
81 negotiate to provide benefit options the same as or similar to other states'
82 qualified plans for the purpose of offering additional options for members of the
83 plan. The board may delegate to duly appointed investment counselors authority

84 to act in place of the board in the investment and reinvestment of all or part of
85 the moneys and may also delegate to such counselors the authority to act in place
86 of the board in the holding, purchasing, selling, assigning, transferring or
87 disposing of any or all of the securities and investments in which such moneys
88 shall have been invested, as well as the proceeds of such investments and such
89 moneys. Such investment counselors shall be registered as investment advisors
90 with the United States Securities and Exchange Commission. In exercising or
91 delegating its investment powers and authority, members of the board shall
92 exercise ordinary business care and prudence under the facts and circumstances
93 prevailing at the time of the action or decision. No member of the board shall be
94 liable for any action taken or omitted with respect to the exercise of, or delegation
95 of, these powers and authority if such member shall have discharged the duties
96 of his or her position in good faith and with that degree of diligence, care and
97 skill which a prudent person acting in a like capacity and familiar with these
98 matters would use in the conduct of an enterprise of a like character and with
99 like aims.

100 6. No investment transaction authorized by the board shall be handled by
101 any company or firm in which a member of the board has a substantial interest,
102 nor shall any member of the board profit directly or indirectly from any such
103 investment.

104 7. No trustee or employee of the savings program shall receive any gain
105 or profit from any funds or transaction of the savings program. Any trustee,
106 employee or agent of the savings program accepting any gratuity or compensation
107 for the purpose of influencing such trustee's, employee's or agent's action with
108 respect to the investment or management of the funds of the savings program
109 shall thereby forfeit the office and in addition thereto be subject to the penalties
110 prescribed for bribery.

166.420. 1. The board may enter into savings program participation
2 agreements with participants on behalf of beneficiaries pursuant to the provisions
3 of sections 166.400 to 166.455, including the following terms and conditions:

4 (1) A participation agreement shall stipulate the terms and conditions of
5 the savings program in which the participant makes contributions;

6 (2) A participation agreement shall specify the method for calculating the
7 return on the contribution made by the participant;

8 (3) The execution of a participation agreement by the board shall not
9 guarantee that the beneficiary named in any participation agreement will be

10 admitted to an eligible educational institution, be allowed to continue to attend
11 an eligible educational institution after having been admitted or will graduate
12 from an eligible educational institution;

13 (4) A participation agreement shall clearly and prominently disclose to
14 participants the risk associated with depositing moneys with the board;

15 (5) Participation agreements shall be organized and presented in a way
16 and with language that is easily understandable by the general public; and

17 (6) A participation agreement shall clearly and prominently disclose to
18 participants the existence of any load charge or similar charge assessed against
19 the accounts of the participants for administration or services.

20 2. The board shall establish the maximum amount which may be
21 contributed annually by a participant with respect to a beneficiary.

22 3. The board shall establish a total contribution limit for savings accounts
23 established under the savings program with respect to a beneficiary to permit the
24 savings program to qualify as a "qualified state tuition program" pursuant to
25 Section 529 of the Internal Revenue Code. No contribution may be made to a
26 savings account for a beneficiary if it would cause the balance of all savings
27 accounts of the beneficiary to exceed the total contribution limit established by
28 the board. The board may establish other requirements that it deems appropriate
29 to provide adequate safeguards to prevent contributions on behalf of a beneficiary
30 from exceeding what is necessary to provide for the qualified [higher] education
31 expenses of the beneficiary.

32 4. The board shall establish the minimum length of time that
33 contributions and earnings must be held by the savings program to qualify
34 pursuant to section 166.435. Any contributions or earnings that are withdrawn
35 or distributed from a savings account prior to the expiration of the minimum
36 length of time, as established by the board, shall be subject to a penalty pursuant
37 to section 166.430.

166.425. All money paid by a participant in connection with participation
2 agreements shall be deposited as received and shall be promptly invested by the
3 board. Contributions and earnings thereon accumulated on behalf of participants
4 in the savings program may be used, as provided in the participation agreement,
5 for qualified [higher] education expenses. Such contributions and earnings shall
6 not be considered income for purposes of determining a participant's eligibility
7 for financial assistance under any state student aid program.

166.430. Any participant may cancel a participation agreement at will.

2 The board shall impose a penalty equal to or greater than ten percent of the
3 earnings of an account for any distribution that is not:

4 (1) Used exclusively for qualified [higher] education expenses of the
5 designated beneficiary;

6 (2) Made because of death or disability of the designated beneficiary;

7 (3) Made because of the receipt of scholarship by the designated
8 beneficiary;

9 (4) A rollover distribution, as defined in Section 529(c)(3)(C)(i) of the
10 Internal Revenue Code; or

11 (5) Held in the fund for the minimum length of time established by the
12 board.

166.435. 1. Notwithstanding any law to the contrary, the assets of the
2 savings program held by the board, the assets of any deposit program authorized
3 in section 166.500, and the assets of any qualified tuition savings program
4 established pursuant to Section 529 of the Internal Revenue Code and any income
5 therefrom shall be exempt from all taxation by the state or any of its political
6 subdivisions. Income earned or received from the savings program, deposit, or
7 other qualified tuition savings programs established under Section 529 of the
8 Internal Revenue Code [program], or refunds of qualified [higher] education
9 expenses received by a beneficiary from an eligible educational institution in
10 connection with withdrawal from enrollment at such institution which are
11 contributed within sixty days of withdrawal to a qualified tuition savings program
12 of which such individual is a beneficiary shall not be subject to state income tax
13 imposed pursuant to chapter 143 and shall be eligible for any benefits provided
14 in accordance with Section 529 of the Internal Revenue Code. The exemption
15 from taxation pursuant to this section shall apply only to assets and income
16 maintained, accrued, or expended pursuant to the requirements of the savings
17 program established pursuant to sections 166.400 to 166.455, the deposit program
18 established pursuant to sections 166.500 to 166.529, and other qualified tuition
19 savings programs established under Section 529 of the Internal Revenue Code,
20 and no exemption shall apply to assets and income expended for any other
21 purposes. Annual contributions made to the savings program held by the board,
22 the deposit program, and any qualified tuition savings program established under
23 Section 529 of the Internal Revenue Code up to and including eight thousand
24 dollars per participating taxpayer, and up to sixteen thousand dollars for married
25 individuals filing a joint tax return, shall be subtracted in determining Missouri

26 adjusted gross income pursuant to section 143.121.

27 2. If any deductible contributions to or earnings from any such program
28 referred to in this section are distributed and not used to pay qualified [higher]
29 education expenses, **not transferred as allowed by 26 U.S.C. 529(c)(3)(C)(i),**
30 **as amended, and any Internal Revenue Service regulations or guidance**
31 **issued in relation thereto**, or are not held for the minimum length of time
32 established by the appropriate Missouri board, **then** the amount so distributed
33 shall be [added to] **included in** the Missouri adjusted gross income of the
34 participant, or, if the participant is not living, the beneficiary.

35 3. The provisions of this section shall apply to tax years beginning on or
36 after January 1, 2008, and the provisions of this section with regard to sections
37 166.500 to 166.529 shall apply to tax years beginning on or after January 1, 2004.

38 [4. The repeal and reenactment of this section shall become effective only
39 upon notification by the State Treasurer to the Revisor of Statutes of the passage
40 of H.R. 529 of the 114th United States Congress.]

[166.435. 1. Notwithstanding any law to the contrary, the assets
2 of the savings program held by the board, the assets of any deposit
3 program authorized in section 166.500, and the assets of any qualified
4 tuition savings program established pursuant to Section 529 of the
5 Internal Revenue Code and any income therefrom shall be exempt from all
6 taxation by the state or any of its political subdivisions. Income earned
7 or received from the savings program, deposit, or other qualified tuition
8 savings programs established under Section 529 of the Internal Revenue
9 Code program shall not be subject to state income tax imposed pursuant
10 to chapter 143 and shall be eligible for any benefits provided in accordance
11 with Section 529 of the Internal Revenue Code. The exemption from
12 taxation pursuant to this section shall apply only to assets and income
13 maintained, accrued, or expended pursuant to the requirements of the
14 savings program established pursuant to sections 166.400 to 166.455, the
15 deposit program established pursuant to sections 166.500 to 166.529, and
16 other qualified tuition savings programs established under Section 529 of
17 the Internal Revenue Code, and no exemption shall apply to assets and
18 income expended for any other purposes. Annual contributions made to
19 the savings program held by the board, the deposit program, and any
20 qualified tuition savings program established under Section 529 of the
21 Internal Revenue Code up to and including eight thousand dollars per

22 participating taxpayer, and up to sixteen thousand dollars for married
23 individuals filing a joint tax return, shall be subtracted in determining
24 Missouri adjusted gross income pursuant to section 143.121.

25 2. If any deductible contributions to or earnings from any such
26 program referred to in this section are distributed and not used to pay
27 qualified higher education expenses or are not held for the minimum
28 length of time established by the appropriate Missouri board, the amount
29 so distributed shall be added to the Missouri adjusted gross income of the
30 participant, or, if the participant is not living, the beneficiary.

31 3. The provisions of this section shall apply to tax years beginning
32 on or after January 1, 2008, and the provisions of this section with regard
33 to sections 166.500 to 166.529 shall apply to tax years beginning on or
34 after January 1, 2004.]

166.456. All personally identifiable information concerning participants
2 and beneficiaries of accounts established within the Missouri [higher] education
3 savings program pursuant to sections 166.400 to 166.456 shall be confidential,
4 and any disclosure of such information shall be restricted to purposes directly
5 connected with the administration of the program.

166.501. Notwithstanding the provisions of sections 166.400 to 166.456 to
6 the contrary, the higher education deposit program is established as a
7 nonexclusive alternative to the Missouri [higher] education savings program, and
8 any participant may elect to participate in both programs subject to aggregate
9 Missouri program limitations.

166.502. As used in sections 166.500 to 166.529, except where the context
11 clearly requires another interpretation, the following terms mean:

12 (1) "Beneficiary", any individual designated by a participation agreement
13 to benefit from payments for qualified higher education expenses at an eligible
14 educational institution;

15 (2) "Benefits", the payment of qualified higher education expenses on
16 behalf of a beneficiary from a deposit account during the beneficiary's attendance
17 at an eligible educational institution;

18 (3) "Board", the Missouri [higher] education savings program board
19 established in section 166.415;

20 (4) "Eligible educational institution", an institution of postsecondary
21 education as defined in Section 529(e)(5) of the Internal Revenue Code;

22 (5) "Financial institution", a depository institution and any intermediary
23

24 that brokers certificates of deposits;

25 (6) "Internal Revenue Code", the Internal Revenue Code of 1986, as
26 amended;

27 (7) "Missouri higher education deposit program" or "deposit program", the
28 program created pursuant to sections 166.500 to 166.529;

29 (8) "Participant", a person who has entered into a participation agreement
30 pursuant to sections 166.500 to 166.529 for the advance payment of qualified
31 higher education expenses on behalf of a beneficiary;

32 (9) "Participation agreement", an agreement between a participant and
33 the board pursuant to and conforming with the requirements of sections 166.500
34 to 166.529;

35 (10) "Qualified higher education expenses", the qualified costs of tuition
36 and fees and other expenses for attendance at an eligible educational institution,
37 as defined in Section 529(e)(3) of the Internal Revenue Code of 1986, as amended.

166.505. 1. There is hereby created the "Missouri Higher Education
2 Deposit Program". The program shall be administered by the Missouri [higher]
3 education savings program board.

4 2. In order to establish and administer the deposit program, the board, in
5 addition to its other powers and authority, shall have the power and authority to:

6 (1) Develop and implement the Missouri higher education deposit program
7 and, notwithstanding any provision of sections 166.500 to 166.529 to the contrary,
8 the deposit programs and services consistent with the purposes and objectives of
9 sections 166.500 to 166.529;

10 (2) Promulgate reasonable rules and regulations and establish policies
11 and procedures to implement sections 166.500 to 166.529, to permit the deposit
12 program to qualify as a qualified state tuition program pursuant to Section 529
13 of the Internal Revenue Code and to ensure the deposit program's compliance
14 with all applicable laws;

15 (3) Develop and implement educational programs and related
16 informational materials for participants, either directly or through a contractual
17 arrangement with a financial institution or other entities for deposit educational
18 services, and their families, including special programs and materials to inform
19 families with children of various ages regarding methods for financing education
20 and training beyond high school;

21 (4) Enter into an agreement with any financial institution, entity, or
22 business clearinghouse for the operation of the deposit program pursuant to

23 sections 166.500 to 166.529; providing however, that such institution, entity, or
24 clearinghouse shall be a private for-profit or not-for-profit entity and not a
25 government agency. No more than one board member may have a direct interest
26 in such institution, entity, or clearinghouse. Such institution, entity, or
27 clearinghouse shall implement the board's policies and administer the program
28 for the board and with electing depository institutions and others;

29 (5) Enter into participation agreements with participants;

30 (6) Accept any grants, gifts, legislative appropriations, and other moneys
31 from the state, any unit of federal, state, or local government or any other person,
32 firm, partnership, or corporation for deposit to the account of the deposit
33 program;

34 (7) Invest the funds received from participants in appropriate investment
35 instruments to be held by depository institutions or directly deposit such funds
36 in depository institutions as provided by the board and elected by the
37 participants;

38 (8) Make appropriate payments and distributions on behalf of
39 beneficiaries pursuant to participation agreements;

40 (9) Make refunds to participants upon the termination of participation
41 agreements pursuant to the provisions, limitations, and restrictions set forth in
42 sections 166.500 to 166.529 and the rules adopted by the board;

43 (10) Make provision for the payment of costs of administration and
44 operation of the deposit program;

45 (11) Effectuate and carry out all the powers granted by sections 166.500
46 to 166.529, and have all other powers necessary to carry out and effectuate the
47 purposes, objectives, and provisions of sections 166.500 to 166.529 pertaining to
48 the deposit program;

49 (12) Procure insurance, guarantees, or other protections against any loss
50 in connection with the assets or activities of the deposit program, as the members
51 in their best judgment deem necessary;

52 (13) To both adopt and implement various methods of transferring money
53 by electronic means to efficiently transfer funds to depository institutions for
54 deposit, and in addition or in the alternative, to allow funds to be transferred by
55 agent agreements, assignment, or otherwise, provided such transfer occurs within
56 two business days;

57 (14) To both adopt and implement methods and policies designed to obtain
58 the maximum insurance of such funds for each participant permitted and

59 provided for by the Federal Deposit Insurance Corporation, or any other federal
60 agency insuring deposits, and taking into consideration the law and regulation
61 promulgated by such federal agencies for deposit insurance.

62 3. The funds shall be invested only in those investments which a prudent
63 person acting in a like capacity and familiar with such matters would use in the
64 conduct of an enterprise of a like character and with like aims, as provided in
65 section 105.688, as a means to hold funds until they are placed in a Missouri
66 depository institution as a deposit. The board may delegate to duly appointed
67 representatives of financial institutions authority to act in place of the board in
68 the investment and reinvestment of all or part of the moneys and may also
69 delegate to such representatives the authority to act in place of the board in the
70 holding, purchasing, selling, assigning, transferring, or disposing of any or all of
71 the investments in which such moneys shall have been invested, as well as the
72 proceeds of such investments and such moneys, however, such investments shall
73 be limited to certificates of deposit and other deposits in federally insured
74 depository institutions. Such representatives shall be registered as "qualified
75 student deposit advisors on Section 529 plans" with the board and such board
76 shall, by rule, develop and administer qualification tests from time to time to
77 provide representatives the opportunity to qualify for this program. In exercising
78 or delegating its investment powers and authority, members of the board shall
79 exercise ordinary business care and prudence under the facts and circumstances
80 prevailing at the time of the action or decision. No member of the board shall be
81 liable for any action taken or omitted with respect to the exercise of, or delegation
82 of, these powers and authority if such member shall have discharged the duties
83 of his or her position in good faith and with that degree of diligence, care, and
84 skill which a prudent person acting in a like capacity and familiar with these
85 matters would use in the conduct of an enterprise of a like character and with
86 like aims.

87 4. No board member or employee of the deposit program shall personally
88 receive any gain or profit from any funds or transaction of the deposit program
89 as a result of his or her membership on the board. Any board member, employee,
90 or agent of the deposit program accepting any gratuity or compensation for the
91 purpose of influencing such board member's, employee's, or agent's action with
92 respect to choice of intermediary, including any financial institution, entity, or
93 clearinghouse, for the funds of the deposit program shall thereby forfeit the office
94 and in addition thereto be subject to the penalties prescribed for

95 bribery. However, a board member who is regularly employed directly or
96 indirectly by a financial institution may state that institution's interest and
97 absent himself or herself from voting.

98 5. Depository institutions originating the deposit program shall be the
99 agent of the board and offer terms for certificates of deposit and other deposits
100 in such program as permitted by the board, subject to a uniform interest rate
101 disclosure as defined in federal regulations of the Board of Governors of the
102 Federal Reserve System, specifically Federal Reserve Regulation DD, as amended
103 from time to time. The board shall establish various deposit opportunities based
104 on amounts deposited and length of time held that are uniformly available to all
105 depository institutions that elect to participate in the program, and the various
106 categories of fixed or variable rates shall be the only interest rates available
107 under this program. A depository institution that originates the deposit as agent
108 for the board and participates in the program shall receive back and continue to
109 hold the certificate of deposit or other deposit, provided such depository
110 institution continues to comply with requirements and regulations prescribed by
111 the board. Such deposit and certificate of deposit shall be titled in the name of
112 the clearing entity for the benefit of the participant, and shall be insured as
113 permitted by any agency of the federal government that insures deposits in
114 depository institutions. Any depository institution or intermediary that fails to
115 comply with these provisions shall forfeit its right to participate in this program;
116 provided however, the board shall be the sole and exclusive judge of compliance
117 except as otherwise provided by provisions in Section 529 of the Internal Revenue
118 Code and the Internal Revenue Service enforcement of such section.

209.610. 1. The board may enter into ABLÉ program participation
2 agreements with participants on behalf of designated beneficiaries pursuant to
3 the provisions of sections 209.600 to 209.645, including the following terms and
4 conditions:

5 (1) A participation agreement shall stipulate the terms and conditions of
6 the ABLÉ program in which the participant makes contributions;

7 (2) A participation agreement shall specify the method for calculating the
8 return on the contribution made by the participant;

9 (3) A participation agreement shall clearly and prominently disclose to
10 participants the risk associated with depositing moneys with the board;

11 (4) Participation agreements shall be organized and presented in a way
12 and with language that is easily understandable by the general public; and

13 (5) A participation agreement shall clearly and prominently disclose to
14 participants the existence of any load charge or similar charge assessed against
15 the accounts of the participants for administration or services.

16 2. The board shall establish the maximum amount of contributions which
17 may be made annually to an ABLE account, which shall be the same as the
18 amount allowed by 26 U.S.C. Section 529A of the Internal Revenue Code of 1986,
19 as amended.

20 3. The board shall establish a total contribution limit for savings accounts
21 established under the ABLE program with respect to a designated beneficiary
22 which shall in no event be less than the amount established as the contribution
23 limit by the Missouri [higher] education savings program board for qualified
24 tuition savings programs established under sections 166.400 to 166.450. No
25 contribution shall be made to an ABLE account for a designated beneficiary if it
26 would cause the balance of the ABLE account of the designated beneficiary to
27 exceed the total contribution limit established by the board. The board may
28 establish other requirements that it deems appropriate to provide adequate
29 safeguards to prevent contributions on behalf of a designated beneficiary from
30 exceeding what is necessary to provide for the qualified disability expenses of the
31 designated beneficiary.

32 4. The board shall establish the minimum length of time that
33 contributions and earnings must be held by the ABLE program to qualify as tax
34 exempt pursuant to section 209.625. Any contributions or earnings that are
35 withdrawn or distributed from an ABLE account prior to the expiration of the
36 minimum length of time, as established by the board, shall be subject to a penalty
37 pursuant to section 209.620.

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